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USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 9/30/2020

MEMORANDUM ENDORSED

September 29, 2020

VIA ECF

The Honorable Gregory H. Woods
Senior United States District Judge
United States District Court - Southern
District of New York
500 Pearl Street
New York, New York 10007-1312

Re: New York Bay Capital, LLC v. Cobalt Holdings, Inc. (19-cv-3618)(GHW)

Dear Judge Woods:

We represent Plaintiff New York Bay Capital, LLC (“NYBAY”) in the above-referenced matter and we submit this joint letter to update the Court on the status of discovery and to request an adjournment of the status conference currently scheduled for October 6, 2020 to a date after the current October 15, 2020 discovery cutoff.

NYBAY’S POSITION:

While the parties have substantially completed all discovery, there are two open discovery matters. The first relates to Defendant Cobalt Holdings, Inc.’s (“Cobalt”) 2019 financial records. The second relates to Cobalt’s reengagement of Evercore, Inc. (“Evercore”).

As this Court knows, NYBAY has sought the production of Cobalt’s consolidated 2019 financial records whether in unaudited or audited form since November 2019. Cobalt was required to maintain such records as a condition of their project financing loan from Credit Suisse to develop and operate their ongoing telecommunications business in Mexico. Cobalt claims that these records do not exist *at this time* though.

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NYBAY believes that Cobalt is improperly withholding its 2019 financial records in any form, whether unaudited or audited; a claim Cobalt denies. For some perspective in this regard, the consolidated audited 2018 financials (as opposed to the unaudited financial statements used to run the business of the Defendant parent and its subsidiaries), which the Court directed Cobalt to produce, were completed this time last year, now approaching nearly two months ago, on August 9th. Notably, Cobalt has promised to produce the requested financial records when they are available, but has not provided any timeline as to when that will be.

NYBAY served a subpoena upon Evercore seeking, *inter alia*, hoping to resolve these open matters. The deadline for the completion of fact discovery is October 15, 2020 for the purpose of permitting Evercore to respond to the subpoena. On September 25, 2020, Evercore made an initial production to NYBAY in response to the subpoena.

If these discovery matters remain open at the time of the discovery cutoff though, NYBAY may require additional intervention from the Court to resolve these issues, particularly regarding the 2019 financial records. Ultimately, NYBAY believes that Cobalt should be required to produce the 2019 financial statements to NYBAY once they are available even if that occurs after the discovery cutoff.

Considering the open issues above and the pending Evercore subpoena, NYBAY believes that the Court should adjourn the October 6, 2020 status conference to a date after the October 15, 2020 discovery cutoff.

COBALT'S POSITION:

As a preliminary matter, defendant Cobalt Holdings, Inc. ("Cobalt") has no objection to adjourning the October 6, 2020 status conference to a date after the October 15, 2020 discovery cutoff.

As to the items NYBAY mentions in its section of this letter, Cobalt reiterates again that Cobalt Holdings' audited financials for 2019 have not yet been completed. Cobalt has previously represented that once they are completed, they will be produced.

We thank the Court for its consideration.

Respectfully submitted,

DUANE MORRIS LLP

/s/Evan Michailidis
Evan Michailidis

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CECCARELLI LAW FIRM PLLC

/s/Joseph J. Ceccarelli
Joseph J. Ceccarelli

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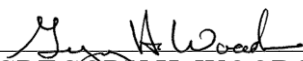
/s/Robert I. Rabinowitz
Robert I. Rabinowitz

cc: All counsel of record (by ECF)

Application granted. The status conference scheduled for October 6, 2020, Dkt No. 114, is adjourned to October 19, 2020 at 3 p.m. The parties' joint status letter is due no later than October 12, 2020. The parties are reminded that all other deadlines in the case management plan remain unchanged.

SO ORDERED.

Dated: September 30, 2020
New York, New York



GREGORY H. WOODS
United States District Judge